# Congress Must Stop the Trial in New York City

by Phyllis Schlafly November 27, 2009

The U.S. Constitution can rescue us from the Obama Administration's latest push toward "remaking America." Our Constitution is on the people's side to stop Obama from turning the judiciary into a platform for America's sworn enemies to spread their propaganda and even use our own laws against us.

Our Constitution's framers foresaw the probability that power-hungry men would try to take over the judiciary. So, they gave us the tools to maintain a government based on the separation of powers.

Obama's Attorney General, Eric Holder, has announced that he will move the trial of the confessed 9/11 terrorist mastermind, Khalid Sheikh Mohammed, known as KSM, from a military court (where he ought to be tried) to a civilian court in New York City. Even worse, Holder plans to reward this terrorist with all the constitutional rights of any ordinary U.S. citizen defendant accused of an ordinary crime.

KSM fits the statutory definition of a terrorist: an "unlawful enemy combatant" who engaged in premeditated, politically motivated violence against noncombatant targets. He's not a U.S. citizen, and he was arrested outside the United States.

The Constitution gives Congress the power to override this Obama-Holder outrage. Congress can and should prevent this travesty, and the sooner the better.

We don't need any 2,000 page legislation; a single sentence will suffice. "Federal District Courts shall have no jurisdiction over any case involving unlawful enemy

combatants, as that term is defined in the United States Code (title 10, section 948a)."

Constitutional authority is clear. Article III, Section 1, states: "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Nothing is new or irregular about Congress prescribing or limiting the kinds of cases that federal courts are permitted to hear. A long historical record conclusively proves that Congress has the power to regulate and limit court jurisdiction, that Congress has used this power repeatedly, and that the courts have accepted it.

The great Chief Justice John Marshall asserted in an 1807 Supreme Court case that "courts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction."

In 2002, for example, Congress passed a law (at Senate Majority Leader Tom Daschle's urging) to prohibit federal courts from hearing cases about brush clearing in his home state of South Dakota. Public Law 107-206, Section 706(j). Pending environmental lawsuits were immediately halted, and a court order that was already issued became null and void. Biodiversity Associates v. Cables, 357 F.3d 1152 (10th Cir. 2004).

There are many bad consequences to staging the trial of KSM in New York City. If he is given all civilian constitutional rights, the government will be required to turn over to him vast amounts of U.S. intelligence and information that will imperil national security and put us in danger of future acts of terrorism.

The chief issue in the trial could become waterboarding rather than the 9/11 terrorist act that killed some 3,000 people. The Obama Administration is infested

with transnationalists, i.e., lawyers who want to integrate foreign law or so-called international law into U.S. domestic law and impose it on Americans.

We wonder if the real purpose of moving this trial to New York is to put the George W. Bush Administration on trial in a foreign court, as the far Left has been demanding. The dangerous publicity and classified information emanating from the trial could give the opportunity to anti-Bush lawyers to take some of this material to the International Criminal Court (to which the United States does not even belong) or some other foreign court (such as Spain, which illegally tried Pinochet of Chile) and urge a trial against George W. Bush for war crimes.

Before Eric Holder became Attorney General, he and other Justice Department lawyers were in law firms that represented detainees at Guantanamo. Those lawyers should all be disqualified; they shouldn't have ever been hired by the Justice Department.

The trial of KSM would be a media circus for many months, much like the O.J. Simpson trial, only ten times as compelling. Defense lawyers will be eager to display their histrionics modeled on Johnnie Cochran's famous argument, "If the glove don't fit, you must acquit!"

What if KSM is acquitted? And released onto the streets of New York? Holder was pathetic in defending his New York decision at a congressional hearing, even assuring the Congressmen that KSM would not be acquitted. Is Holder planning a show trial where the verdict is planned in advance?

Congress should act promptly to stop this dangerous move of KSM's trial from a military court to a federal court in New York. The Democratic Congress is loath to overrule Obama, but the longer this outrage festers in the public consciousness, the more it will damage the Obama Administration.